



The Right to Disconnect

Employer Guide



Australian
Chamber of Commerce
and Industry

SaCsa
Service and Creative
Skills Australia



This publication has been funded by the Australian Government Department of Employment and Workplace Relations through the Productivity, Education and Training Fund grant program.

Disclaimer

The material in this guide is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance or situation. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances. The Australian Chamber of Commerce and Industry accepts no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in this guide.

Working for business.
Working for Australia

Telephone 02 6270 8000 | Email info@acci.com.au | Website www.acci.com.au

Media Enquiries

Telephone 02 6270 8020 | Email media@acci.com.au

Canberra Office

Commerce House
Level 3, 24 Brisbane Avenue
Barton ACT 2600

PO BOX 6005
Kingston ACT 2604

ABN 85 008 391 795

© Australian Chamber of Commerce and Industry 2023

This work is copyright. No part of this publication may be reproduced or used in any way without acknowledgement to the Australian Chamber of Commerce and Industry.

Further Disclaimers & Acknowledgements

The Australian Chamber of Commerce and Industry (ACCI) has taken reasonable care in publishing the information contained in this publication but does not guarantee that the information is complete, accurate or current. In particular, ACCI is not responsible for the accuracy of information that has been provided by other parties. The information in this publication is not intended to be used as the basis for making any investment decision and must not be relied upon as investment advice. To the maximum extent permitted by law, ACCI disclaims all liability (including liability in negligence) to any person arising out of use or reliance on the information contained in this publication including for loss or damage which you or anyone else might suffer as a result of that use or reliance.

ABOUT SACSA

Service and Creative Skills Australia (SaCSA) is an industry-owned, industry-led Jobs and Skills Council (JSC), funded by the Department of Employment and Workplace Relations (DEWR).

We offer workforce planning, training product development, guidance and advocacy for the following industries:

- Arts
- Personal Services
- Retail
- Tourism
- Hospitality.

Working within a tripartite approach, SaCSA is the critical link between industry stakeholders, government and unions. We aim to provide a stronger, more strategic voice in ensuring that Australia's Vocational Education and Training (VET) sector delivers stronger outcomes for both employers and employees.

As the leader in workforce development initiatives for our industries, SaCSA collaborates with industry stakeholders to identify and articulate employment trends both now and into the future and develops solutions that best serve those needs.

www.sacsa.org.au

Contents

1. Introduction	2
Summary of Advice and Commencement	3
Terms used	3
2. What is the right to disconnect?	4
3. Disputes	7
4. Modern Awards	11
5. FAQs	15
6. General Advice	17
7. Annexures	21
Annexure A — Template Email Communication to employee and managers on the right to disconnect	21
Annexure B — Example of contract terms	25
Annexure C — Template Right to Disconnect Policy	26

1. Introduction

- 1.1 *The Fair Work Legislation Amendment (Closing Loopholes) Act 2024* included a new 'right' for employees to 'disconnect'. The amendments introduced an employee right to disconnect into the *Fair Work Act 2009* (FW Act) which makes clear that employees are not required to monitor, read, or respond to employer or work-related contact out of hours, unless refusing to do so is unreasonable.
- 1.2 The new right is in effect a right to 'refuse' or 'ignore'. These changes include the following:
 - a. the new right allows an employee to refuse to monitor, read or respond to contact or attempted contact from their employer outside of their working hours.
 - b. this right also extends to contact from a third-party contact, such as a client or customer.
 - c. this includes monitoring a phone or email and responding to calls, texts or emails etc.
 - d. this does not prevent an employer or a third party ringing an employee, texting them or sending an email outside of working hours.
 - e. the right to refuse cannot be exercised if the refusal is unreasonable and the legislation provides guidance on what might affect this test.
 - f. the right operates for the purposes of the adverse action / general protections provisions of the FW Act.
 - g. the laws apply to all employees covered by the Fair Work System including award and enterprise agreement free employees (subject to when they commence).
 - h. the Fair Work Commission is empowered to deal with disputes about the new right.
 - i. the Fair Work Commission will have a 'test case' this year to include a clause in all modern awards dealing with this new right.
- 1.3 This guide is intended to help employers navigate these changes and offer practical advice for complying with new obligations. It is important that employers are familiarised with these changes. These changes will affect a wide range of businesses across different sectors.
- 1.4 The guide should serve as a starting point for understanding new obligations and considering potential vulnerabilities for individual businesses. It does not cover every single aspect of the legislative changes, but rather the substantive provisions. Further advice should always be sought for the resolution of specific issues.
- 1.5 When reading the guide, it is important to check the commencement date under the title at the top of each section or in the table below. The footnotes throughout this guide assume that the provisions have commenced and reference the resulting section of the FW Act.
- 1.6 The guidance in this document was finalised on **30 August 2024** and may be subject to future revision.

Summary of Advice and Commencement

Topic	Change	Commencement	Advice	Page
Right to disconnect	The right to disconnect will apply to national system employees and employers, other than those in small business employers. Modern awards will include a right to disconnect term from this date.	26 August 2024	Familiarise yourself with the new provisions (refer to general advice for tips).	4
Right to disconnect — small businesses	The right to disconnect will apply to small business employers and employees, providing additional time for these employers and employees to make arrangements that suit their workplace.	26 August 2024	Familiarise yourself with the new provisions (refer to general advice for tips).	4
Right to disconnect Guidelines	Introduction of guidelines for the operation of the right to disconnect.	TBC	Monitor the progress of the FWC in making Guidelines.	6
Disputes	The Fair Work Commission will be able to deal with disputes about the employee right to disconnect. These provisions will apply if there is a dispute between an employer and an employee because the employee has refused to monitor, read or respond to contact or attempted contact.	26 August 2024	Workers will be able to assert their rights from 26 August 2024. Employers should review their current employment contracts, practices and policies (see general advice) to ensure they are compliant with the new regime.	7

* These commencement dates could commence earlier on a date fixed by proclamation, although it is unlikely that this will occur. The Federal Government has given no indication for the possibility of early commencement.

Terms used

Term	Meaning
Bill	Fair Work Legislation Amendment (Closing Loopholes No.2) Bill 2023
Closing Loopholes	The name of new legislation (laws) introducing changes to the Fair Work Act and other workplace laws
FW Act	Fair Work Act 2009
FWC	Fair Work Commission
Minister	Minister for Employment and Workplace Relations

2. What is the right to disconnect?

Commencement: 26 August 2024

What to do next: Understand what the right to disconnect involves. Employers should review their current methods of contact, employment contracts, practices and policies to ensure they are compliant with the new regime.

Highlights

- The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* introduces a high-level right to disconnect for all national system employees into Part 2–9 of the FW Act.
- Employees will now have a right to not respond to contact from their employer outside of their working hours, unless doing so is unreasonable.
- The new right is in effect a right to ‘refuse’ or ‘ignore’.

Changes

What is the ‘right’?

- 2.1 The new section 333M of the FW Act provides employees with the ‘right’ to refuse to monitor, read or respond to contact, or attempted contact, from:
 - a. their employer outside of the employee’s ‘working hours’ unless the refusal is ‘unreasonable’¹; and/or
 - b. from a third party if the contact or attempted contact relates to their work and is outside of the employee’s ‘working hours’ unless the refusal is ‘unreasonable’.²
- 2.2 Importantly, section 333M(4) states that this ‘right’ falls under the definition of a ‘workplace right’ within the meaning of the general protections’ provisions of the FW Act. The general protections provisions protect employees from being adversely treated (or otherwise discriminated against) because they have exercised or propose to exercise workplace rights.
- 2.3 In this case, this means that an employer who treats an employee adversely because the employee has exercised this right to disconnect, or has proposed to exercise this right, will be taken to have breached the general protections provisions.³

NB: general protections fines and other orders

Where an employer breaches the general protections provisions, they can be liable for compensation orders to remedy any loss associated with the breach. They can also be subject to fines of up to \$82,500 per corporation or \$16,500 per individual who is found to have been “involved in the contravention”.

- 2.4 Where an employee is covered by an enterprise agreement and that enterprise agreement contains a right to disconnect term with provisions more favourable than the provisions in the FW Act, the right to disconnect term in the agreement continues to apply.⁴

1 FW Act s 333M(1)

2 FW Act s 333M(2)

3 FW Act s 333M(4)

4 FW Act s 333M(6)

What is 'unreasonable'?

- 2.5 When determining whether a refusal is 'unreasonable', the following factors must be taken into account (amongst any other factors that may also be taken into account):
- a. the reason for the contact or attempted contact;
 - b. how the contact or attempted contact is made and the level of disruption the contact or attempted contact causes the employee;
 - c. the extent to which the employee is compensated:
 - i. to remain available to perform work during the period in which the contact or attempted contact is made; or
 - ii. for working additional hours outside of the employee's ordinary hours of work;
 - d. the nature of the employee's role and the employee's level of responsibility; and
 - e. the employee's personal circumstances (including family or caring responsibilities).⁵
- 2.6 Having regard to the above, whether a refusal is 'unreasonable' will be contextual to individual circumstances; how, when, why, who. Importantly, no one of the above factors is determinative when considering whether an exercise of the right to disconnect is unreasonable.

What does outside working hours mean?

- 2.7 The term 'working hours' is broader than and distinguishable from other terms describing an employee's working arrangements, such as an employee's 'ordinary hours of work'. This means that an employer can freely contact an employee during *all* of their working hours, which would include ordinary hours and overtime, and an employee's refusal to monitor, read or respond to those communications will not be protected by the right to disconnect.
- 2.8 However, once those working hours have ceased, an employee can elect to exercise their right to disconnect.

Can employers contact employees after hours?

- 2.9 There is no prohibition on employers contacting an employee after-hours. However, employees have the right not to monitor, read or respond to any after hours communication they receive from their employer or from a third party (e.g. customer, clients) where such a refusal is reasonable.
- 2.10 While the FWC have yet to make a determination on the right to disconnect, it is likely that the form of communication may be of relevance in determining whether an exercise of the right to disconnect is reasonable. Employers ought to consider the frequency of out-of-hours communication with employees, the means by which the communication is made (email, phone call, text message, etc.), and the urgency of the communication.

Remuneration of employees and the nature of the employee's role

- 2.11 Another key consideration is the employee's compensation, i.e. the employee's remuneration, and the nature of their role. Employers should not interpret this to mean that where they deem an employee to be reasonably remunerated that the right to disconnect does not apply to them. The right to disconnect applies to **all** employees and is a workplace right. An employer is unable to 'contract out' of this right.
- 2.12 The nature of an employee's role and their remuneration will inform whether a particular exercise of a right to disconnect was unreasonable. This will also be viewed in the context of the reason for the attempted contact, and the other mandatory considerations.
- 2.13 It is reasonable to expect that the nature of an employee's role will also encompass the expectations that an employer has of a person employed to perform that role. It is critical that employers provide clear expectations to their employees and include these expectations in position descriptions.
- 2.14 Employers must also take steps to assess whether their expectations are reasonable. Where an urgent matter or emergency arises, it may be reasonable to expect an employee to respond to work-related communication. Where communication has been made relating to a non-urgent matter, an employee's exercise of their right to disconnect is more likely to be considered reasonable.

5 FW Act s 333M(3).

- 2.15 To navigate these matters, employers are encouraged to develop clear policies and guiding principles for types of communication. It will also be important to clarify how communication will be made for different types of communication. Where a non-urgent matter arises, an employer may consider sending an email and including in the email that there is no expectation that the employee responds. In the event of an urgent matter or emergency, an employer should establish consistent practices in how those events will be communicated. For example, an employer may establish that in the event of an urgent matter or emergency, they will initially make a phone call to the employee, followed by a text message in the event the call is unanswered.
- 2.16 It is also advised the employers communicate what may constitute an urgent matter or emergency in that workplace.

Guidelines

- 2.17 The FWC must make written guidelines in relation to the operation of the right to disconnect, however these guidelines will not be a legislative instrument.⁶ That is, the Guidelines will not themselves have a binding force of their own. They simply explain how the broader right to disconnect will operate. At the time of publication, the FWC has not published those Guidelines. The FWC has determined that it will be in a better position to make Guidelines once it has dealt with some disputes concerning the operation of the right to disconnect, as that will allow it to have some understanding of the practical issues for which guidance may be required.

Illustrative example: Reasonable refusal

Jack is employed as a Sales Administrator at Brick Place. Jack works a 35-hour week and is not compensated for being available during off-hours or for working additional time. Jack's Manager, Jessica, is preparing a tender for a client and texts Jack on a Saturday morning, asking him to check his emails for an email that Jessica has sent him, and asks him to provide her with sales data, as she is choosing to work on the tender over the weekend. Jack has family responsibilities over the weekend and chooses not to respond to Jessica. On Monday morning, Jessica confronts Jack and asks why he didn't respond, and he explains why.

The refusal is likely considered reasonable. This is because if an employee receives work-related emails or calls after their workday ends, they have the right to disconnect and can choose not to respond until their next working hours. Jessica's request wasn't for information wasn't urgent, and as mentioned, Jack was not remunerated for responding to out of hours communication. Jessica apologises for contacting Jack after his workday had ended and will be more mindful of making similar requests in the future.

Illustrative example 2

Tanya is a manager for ConsultancyCo. She is not covered by an award, and earns a salary that comfortably exceeds the average Australian salary. On this basis, ConsultancyCo have notified Tanya that she is unable to exercise her right to disconnect. ConsultancyCo stated that due to her remuneration, she is expected to respond to all work-related communication, and that disciplinary action may be taken if she fails to do so.

ConsultancyCo have inappropriately interpreted the provisions relating to the reasonableness of an exercise of the right to disconnect. If ConsultancyCo attempted to enforce its approach, it will have breached the general protections provisions.

3. Disputes

Commencement: 26 August 2024

What to do next: Monitor the progress of the FWC in making orders regarding disputes.

Highlights

- Parties are encouraged to resolve a dispute between them at the workplace level. If they cannot, an employer or employee (or a person or industrial association representing them) will be able to apply to the FWC to resolve the dispute.
- The FWC will be able to make an order, or deal with the dispute as it considers appropriate, to resolve the dispute (other than ordering the payment of a pecuniary amount). This includes dispute resolution by mediation, conciliation, making a recommendation, or expressing an opinion. If both parties agree, the FWC may arbitrate the dispute.
- The FWC will be able to make orders to stop employees from unreasonably refusing contact; or to stop employers adversely treating an employee or requiring them to continue to accept work-related contact (when an employee's refusal is not unreasonable).
- The Australian Government introduced the Fair Work Amendment Bill 2024 on 15 February 2024 to ensure that a person is not exposed to criminal penalties for contravening a FWC order in relation to the right to disconnect.

Changes

How are disputes resolved?

- 3.1 The disputes provisions about the employee right to disconnect are dealt with under section 333N of the FW Act. These provisions apply if there is a dispute between an employer and an employee because the employee has refused to monitor, read or respond to contact or attempted contact under section 333M of the Act (outlined in the section above) and:
 - a. the employer reasonably believes that the refusal is unreasonable; or
 - b. the employer has asserted that the refusal is unreasonable, and the employee reasonably believes the refusal is not unreasonable; or
 - c. there is another dispute between the employer and the employee about the operation of section 333M⁷
- 3.2 In the event that a dispute arises in relation to an employee's refusal to be contacted outside of their 'working hours', the legislation requires that the dispute must be first discussed at the workplace level.⁸
- 3.3 Once this has occurred, and no resolution has been reached, one of the parties has the liberty to apply to the FWC to resolve the dispute. The FWC has the ability to make an order under section 333P to stop refusing contact or to stop taking certain actions; or otherwise deal with the dispute.⁹

7 FW Act s 333N(1)

8 FW Act s 333N(2)

9 FW Act s 333N(3)

Orders to stop refusing contact or to stop taking certain actions

- 3.4 The FWC may only make orders if an application for an order is made and the FWC is satisfied that either or both of the following apply:
- a. an employee has unreasonably refused to monitor, read or respond to contact or attempted contact and there is a risk the employee will continue to do so; and/or
 - b. an employee's refusal to monitor, read or respond to contact or attempted contact is not unreasonable and there is a risk that the employer will:
 - i. Take disciplinary or other action against the employee because of the employer's belief that the refusal is unreasonable; or
 - ii. Continue to require the employee to monitor, read or respond to contact or attempted contact despite the employee's refusal to do so; then the FWC may make an order.¹⁰
- 3.5 Provided one of the triggers for the FWC making orders (outlined at paragraph 3.4 above) is met, the FWC may make any order it considers appropriate (other than ordering of a fine), if:
- a. to prevent the employee from continuing to unreasonably refuse to monitor, read or respond to contact or attempted contact; or
 - b. to prevent the employer from taking any disciplinary or other adverse action against an employee exercising a right to disconnect; or
 - c. to prevent the employer from continuing to require the employee to monitor, read or respond to contact or attempted contact.¹¹
- 3.6 The FWC must deal with an application within 14 days after the application is made; and deal with the application as soon as is reasonably practicable after the FWC starts to deal with it.¹²
- 3.7 The FWC may dismiss an application if it considers that the application is frivolous or vexatious. The FWC can also dismiss disputes that might involve matters that relate to Australia's defence; or national security; or an existing or future covert operation of the Australian Federal Police; or an existing or future international operation of the Australian Federal Police.¹³
- 3.8 If an employer considers that an application is frivolous or vexatious; the employer may apply to the FWC to have the original application dealt with expeditiously and efficiently; and a decision on the original application communicated by the FWC in a timely way.¹⁴

Effect of orders

- 3.9 If an Order is issued by the FWC, a person to whom an order applies must not contravene a term of the order.¹⁵
- 3.10 The penalty for a contravention is 60 penalty units. From 1 July 2023 a penalty unit was \$313. That means 60 penalty units = \$18,780.¹⁶
- 3.11 A person will not contravene a term of an order unless the order applies to the person.

Defence and national security

- 3.12 Nothing in the subdivision requires or permits a person to take, or to refrain from taking, any action if the taking of the action, or the refraining from taking the action, would be, or could reasonably be expected to be, prejudicial to Australia's defence; or Australia's national security; or an existing or future covert operation of the Australian Federal Police; or an existing or future international operation of the Australian Federal Police.¹⁷

10 FW Act s 333P(1)

11 FW Act s 333P(2)

12 FW Act s 333P(3)

13 FW Act s 333P(4)

14 FW Act s 333P(5)

15 FW Act s 333Q

16 FW Act s 333Q

17 FW Act s 333S

Dealing with disputes in other ways

- 3.13 If an application made under subsection 333N(3) for the FWC to deal with a dispute does not consist solely of an application for an order, then:
- a. the FWC must deal with the dispute; and
 - b. if the parties notify the FWC that they agree to the FWC arbitrating the dispute — the FWC may deal with the dispute by arbitration.¹⁸ That is, the FWC can determine whether the employee refusal to respond to employer requests is a reasonable refusal.

Case example: application made in the FWC for a ‘Stop Order’

Sarah, a Junior Marketing Officer at a digital agency, PixelPulse Digital, has been consistently working long hours to meet project deadlines. Despite her efforts, she notices her work-life balance deteriorating, with frequent out-of-hours emails and calls disrupting her personal time. Concerned about burnout and the impact on her well-being, Sarah decides to exercise her right to disconnect by setting clear boundaries for after-hours communication. As she is also a junior within the workplace, she is also worried that she is not being appropriately compensated for the number of additional hours she works beyond her daily ordinary working hours of 9:00am–5:00pm.

She communicates her availability window to her team, stating that she will only respond to urgent matters outside of her regular work hours and requests that non-urgent issues be addressed during business hours. Despite her efforts to establish healthy boundaries, Sarah’s manager, Paul, feeling pressured to meet client demands, continues to contact her late into the evenings and on weekends for non-urgent matters.

Sarah, determined to uphold her right to disconnect and prioritise her well-being, politely reminds her manager of the agreed-upon communication boundaries. However, her manager becomes increasingly frustrated with her refusal to respond promptly to non-urgent requests outside of working hours. As a result, Sarah starts to notice a shift in her manager’s attitude towards her. She is excluded from important meetings, receives less favourable project assignments, and begins to face unwarranted criticism of her performance. Eventually, Sarah realises that her employer is taking adverse action against her for asserting her right to disconnect.

Feeling unsupported and unfairly treated, Sarah decides to escalate the matter internally, seeking assistance from HR to address the adverse treatment she is experiencing. HR then sets up a in-person meeting with Sarah, her manager Paul, and a workplace advisor to discuss the issue.

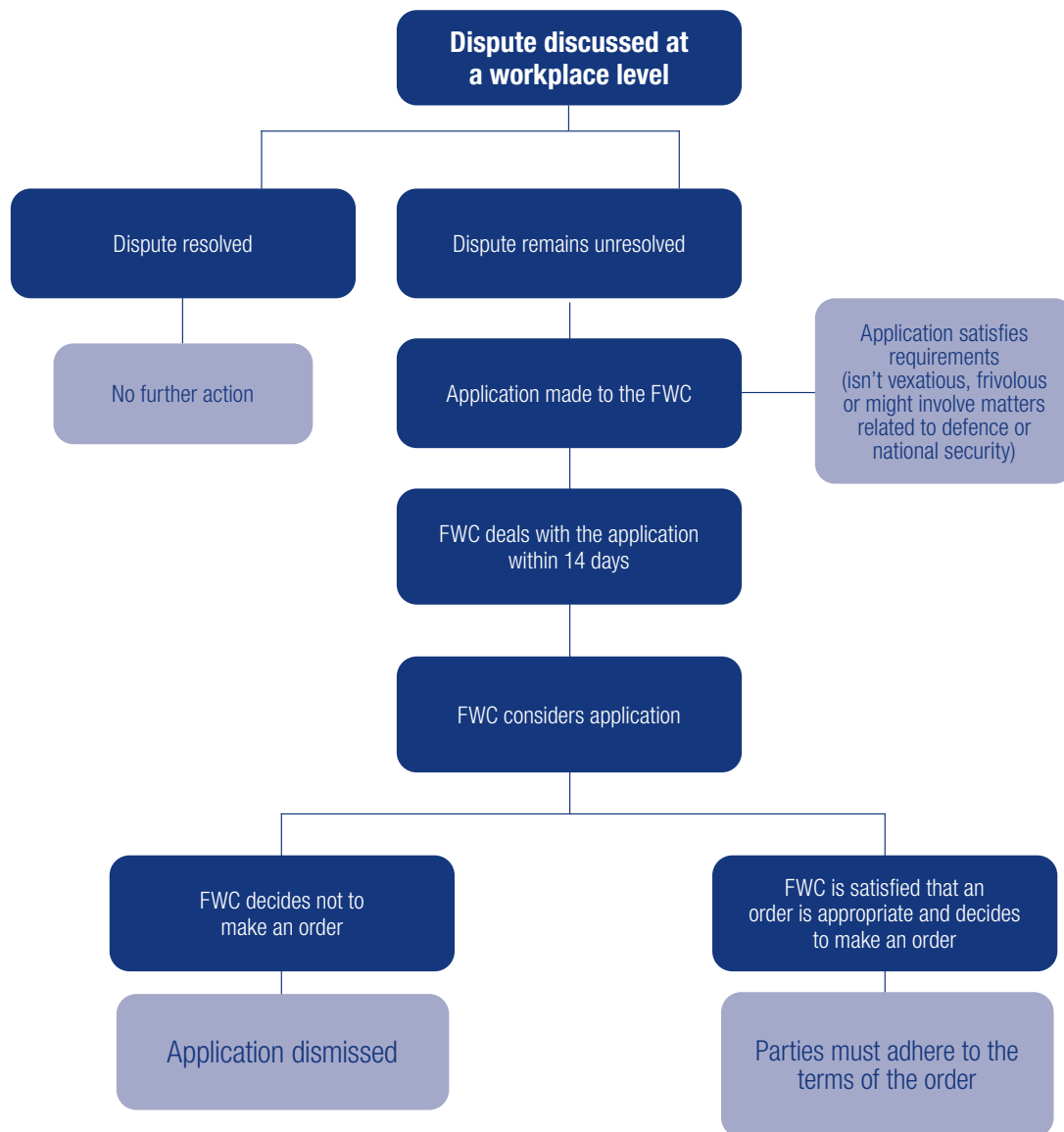
During the meeting, Sarah clearly communicates her concerns to her manager and explains that she believes that the manager is taking adverse actions against her for exercising her right to disconnect.

Despite Sarah’s efforts to resolve the situation amicably, Paul fails to acknowledge the validity of Sarah’s concerns and explains that he is not treating Sarah unfairly at all. He also says to Sarah during the meeting ‘well it is normal for juniors to work extra hours outside of the ordinary 9-5pm, the juniors who go above and beyond are the ones who make it in this industry, the ones who just do the standard 9-5pm will never excel and will just be ordinary’.

Throughout the following weeks after the meeting, Paul continues to penalise Sarah for exercising her right to disconnect. Sarah makes an application to the FWC to resolve the dispute, and the company are ordered to stop contacting Sarah outside of her normal working hours. Paul then must adhere to the orders made.

18 FW Act s 333V

Flowchart 1 — Process for resolving disputes



4. Modern Awards

Commencement: 26 August 2024 (or 26 August 2025 for small business employers with under 15 employees)

What to do next: In addition to reviewing current methods of contact, employment contracts, practices, and policies to ensure compliance with the FW Act, businesses should similarly ensure compliance with relevant awards.

Highlights

- The right to disconnect will apply to national system employees and employers, other than those employed by small business employers, from 26 August 2024. Modern awards also include a right to disconnect term that takes effect from this date.

Changes

Right to disconnect clauses

- 4.1 Pursuant to section 149F of the FW Act, the FWC have implemented a right to disconnect term into all modern awards. The function of the right to disconnect term is to provide for the exercise of an employee's rights as set out in section 333M in all modern award instruments.
- 4.2 On 23 August 2024, the FWC handed down its decision containing the wording of the right to disconnect term to be implemented in all modern awards.¹⁹ In its decision, the Full Bench of the FWC referred to the 'novelty' of the right to disconnect, and stipulated that it purposefully elected to take a minimalistic approach due to the 'likelihood that future variations to the term in particular awards will be necessary once the issues affecting specific industries and occupations are better understood'.²⁰
- 4.3 The right to disconnect term to be included in all modern awards, and effective from 26 August 2024 (26 August 2025 for small business employers with less than 15 employees) is:

Clause XX.1	Clause XX provides for the exercise of an employee's right to disconnect under section 333M of the Act. NOTE: <ol style="list-style-type: none">(a) Section 333M provides that, unless it is unreasonable to do so, an employee may refuse to monitor, read or respond to contact, or attempted contact, from:<ol style="list-style-type: none">(1) their employer outside of the employee's working hours,(2) a third party if the contact or attempted contact relates to their work and is outside of the employee's working hours.(b) Section 333M(3) lists matters that must be taken into account in determining whether an employee's refusal is unreasonable.(c) Section 333M(5) provides that an employee's refusal will be unreasonable if the contact or attempted contact is required under a law of the Commonwealth, a State or a Territory. (d) Section 333N provides for the resolution of disputes about whether an employee's refusal is unreasonable and about the operation of section 333M.(e) The general protections in Part 3-1 of the Act prohibit an employer taking adverse action against an employee because of the employee's right to disconnect under section 333M of the Act.
--------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁹ [Variation of modern awards to include a right to disconnect term. \[2024\] FWCFB \(AM2024/14\)](#)

²⁰ *Ibid.*

Clause XX.2	Clause XX applies from the following dates: (a) 26 August 2024 — for employers that are not small business employers on this date and their employees. (b) 26 August 2025 — for employers that are small business employers on 26 August 2024 and their employees.
Clause XX.3	An employer must not directly or indirectly prevent an employee from exercising their right to disconnect under the Act.
Clause XX.4	Clause XX.3 does not prevent an employer from requiring an employee to monitor, read or respond to contact, or attempted contact, from the employer outside of the employee's working hours where: (a) the employee is being paid the stand-by allowance under the relevant award clause; and (b) the employer's contact is to notify the employee that they are required to attend or perform work or give other notice about the stand-by.
Clause XX.5	Clause XX.3 does not prevent an employer from contacting, or attempting to contact, an employee outside of the employee's working hours in circumstances including to notify them of: (a) an emergency roster change under the relevant award clause; or (b) a recall to work under the relevant award clause.

Practical Guidance

4.4 While the FWC has implemented a right to disconnect term that is somewhat minimalistic in nature, it is important to note that there are some key differences between the term and the term and the right to disconnect as contained in the FW Act. Clause XX.1 replicates section 333M of the FW Act. Interpretation of that clause may remain consistent with the earlier chapters of this Guide. There are key additions to the right to disconnect term that will inform the way the right to disconnect operates in practice.

Clause XX.3

- 4.5 By stipulating that an employer 'must not directly or indirectly prevent an employee from exercising their right to disconnect', the FWC have placed an additional obligation on employers. That being said, a right to disconnect may only be exercised where it is not unreasonable for the employee to do so.
- 4.6 Importantly, the right to disconnect term does not prevent an employer from contacting an employee at any time, however, employers will need to take steps to ensure that communication out of hours does not have the consequence of directly or indirectly preventing an employee from exercising their right to disconnect.
- 4.7 While actions that directly prevent an employee from exercising their right to disconnect might be apparent, employers ought to take care around what actions may indirectly prevent an employee from the reasonable exercise of their right to disconnect. Since the FWC is yet to make a determination on the application of the right to disconnect, it is unclear what interpretation will be given to the words 'directly or indirectly'. The FWC may decide to interpret those words in a similar manner to how it would interpret the FW Act general protections provisions, being that an employer is unable to take adverse action against an employee for their exercise or proposed exercise of the right to disconnect.
- 4.8 Given the use of the work 'indirectly' in the right to disconnect term, employers should be prepared for a broader interpretation that may include a range of additional actions, that may not amount to adverse action but may result in an employee being 'directly or indirectly' prevented from exercising their right to disconnect, and will result in a breach of the relevant award.
- 4.9 Employers will benefit from being clear in communicating their expectations, and the urgency of communication. Employers should consider how their communication will be received by an employee. For example, a request for a call-back outside of hours, may prevent an employee from reasonably exercising their right to disconnect.

- 4.10 It is recommended for employers to develop a workplace policy that clearly indicates when the right to disconnect is considered reasonable in that particular workplace. In instances where an employee is reasonably exercising their right to disconnect, contact or attempted contact made by an employer outside of hours may include a disclaimer to state that the contact does not require the employee's attention until they have commenced their next shift. Additionally, employers should take care to avoid incentivising an employee not to exercise their right to disconnect.

Example

Tony is the Manager of Luxe Pty Ltd, a retail shop spanning multiple locations selling luxury beauty and self-care products. Employees of Luxe Pty Ltd are covered by the General Retail Industry Award. Tony employs a number of part- and full-time employees, however, relies predominantly on casuals for weekend and evening work. When a casual employee is unable to attend a shift, Tony sends all available casuals an SMS message to fill the shift. Shifts are then filled on a 'first in, first served' basis.

While an employee who is exercising their right to disconnect would not respond to communication to fill a vacant shift, this is likely not considered an incentivised practice and would likely not breach Clause XX.3

Tony received a last-minute notification for a shift vacancy due to occur the next day. After checking his list of available casual employees, he determined that only Anish and Lia are potential candidates for the shift. Tony is aware that Lia often exercises her right to disconnect and decides only to text Anish regarding the availability of the shift, which strays from the typical practice of sending an SMS to all available employees. Anish accepts the shift. Lia is made aware that she was not notified for the shift, and now feels as though she should make herself available for out of hours communication in order to be considered for future shift vacancies.

Tony has likely breached Clause XX.3 by circumventing his usual practices to fill a vacant shift, resulting in Lia waiving her right to disconnect.

Example

Leo is a manager of accounting firm, Crunching Numbers. He receives a communication from a client who is assigned to his employee, Minh. Minh is currently out of the office on an RDO and Leo is not in a position to respond to the enquiry from Minh's client. Leo has determined that the client's concern can be addressed when Minh returns to the office. Despite this, Leo decides to send Minh a text stating that the client had called and for Minh to handle it as soon as possible. Minh sees the text message and interprets the message as indicating he must contact the client on his RDO.

Leo may have indirectly prevented Minh from exercising his right to disconnect through his wording of the text message. Given he had evaluated the client's enquiry as non-urgent, he should have been clearer in his communication to Minh.

Clause XX.4

- 4.11 Clause XX.4 has provided circumstances in which an employer may require an employee to monitor, read or respond to communication, specifically when in receipt of a stand-by allowance. The FW Act stipulates that an employee's specific remuneration to monitor, read or respond to communication will formulate a consideration when determining whether that employee's exercise of the right to disconnect will be reasonable.
- 4.12 The right to disconnect term makes it clear that an employee's exercise of the right to disconnect when in receipt of a stand-by allowance and is contacted in relation to the stand-by, either to return to work, or otherwise, will be considered an unreasonable exercise.
- 4.13 To avoid any confusion, where an employee is being paid a stand-by allowance, an employer may seek to qualify any communication during the relevant period by specifying the relevance of the contact to the employee's receipt of the allowance.

Clause XX.5

- 4.14 Clause XX.5 operates to ensure that an employer is not prevented from contacting an employee in any circumstance. The wording of Clause XX.5 has been deliberately made non-exhaustive but does draw reference to specific notifications relating to emergency roster changes and a recall to work.
- 4.15 While an employer, under the right to disconnect term is never prevented from contacting an employee, care will still be required when navigating Clause XX.3's interactions with communication. Employers should ensure that any communication with an employee outside of their working hours does not directly or indirectly prevent the employee from exercising their right to disconnect. For example, an employer may wish to avoid telling an employee that they must provide a response to specific communication.

Considerations

- 4.16 Importantly, employers must be aware that while the right to disconnect is a workplace right for the purpose of the general protections provisions, its inclusion in modern awards means that employers may be vulnerable to a dispute for a breach of the relevant modern award.
- 4.17 Navigating the right to disconnect will be easier for businesses where communication is clear. Employers should seek to develop a right to disconnect policy and establish best practices or policies for communication with employees. These policies should be clearly conveyed to all employees, including management. Policies may seek to inform employees on occasions when an employee's right to disconnect will not be considered reasonable. It is important that when drafting such a policy, an employer can justify its expectations of employees, with particular consideration to be given to:
- a. the reason for the contact or attempted contact;
 - b. how the contact or attempted contact is made and the level of disruption the contact or attempted contact causes the employee;
 - c. the extent to which the employee is compensated:
 - i. to remain available to perform work during the period in which the contact or attempted contact is made; or
 - ii. for working additional hours outside of the employee's ordinary hours of work;
 - d. the nature of the employee's role and the employee's level of responsibility;
 - e. the employee's personal circumstances (including family or caring responsibilities).
- 4.18 Employers should also consider including a dispute resolution process in any policy created. An example of a right to disconnect policy is included in this Guide below.
- 4.19 Furthermore, for employers who are engaged in enterprise bargaining, it may be worthwhile considering an including greater detail around the right to disconnect in an enterprise agreement, including specifying circumstances that give rise to an expectation for a response from an employee, or to specify that a response is not required for the employer to have discharged their notification obligations. Employers should seek independent advice to determine an appropriate clause and bargaining strategy.
- 4.20 Due to the broad nature of the right to disconnect term in modern awards, employers should prepare for applications for variation to be made to the FWC, particularly by unions whose position is that the term should have been more prescriptive. Similarly, where the right to disconnect term does not appropriately service the relevant award, an employer, or employer group, may seek a variation of that award. Employers should monitor the right to disconnect in their workplace and report difficulties with its implementation to their relevant Business Chamber or Industry Group.

5. FAQs

5.1 What is the right to disconnect?

The right to disconnect is a new employee right to 'switch off' and refuse to respond to contact from their employer or customers/clients outside of the employee's ordinary working hours, where it is reasonable to do so. It is therefore a workplace right protecting employees who choose to ignore attempts by their employer to contact them after hours.

5.2 What will the right to disconnect look like in practice?

The right will allow an employee to refuse contact from their employer and third parties who contact or attempt to contact an employee after-hours unless that refusal is unreasonable. Contact is not defined, but safely includes emails, texts, social media messages and phone calls.

You may find that the right to disconnect does not have a practical application to your workplace, however, it is nonetheless important to keep in mind. It is recommended that employers remind themselves of the expectations of their employees, and the remuneration structures of the business to understand whether an expectation for an employee to respond to out of hours communication is reasonable with respect to the right to disconnect.

5.3 Do these provisions apply to small businesses?

Small business employers are exempt from the right to disconnect provisions for the first 12 months after the new right commences to operate. The right to disconnect provisions will apply to small businesses on 26 August 2025.

5.4 Can I still contact my staff outside of their ordinary hours?

Yes, there is no prohibition on contacting an employee outside their working hours. However, employees have the right not to monitor, read or respond to any afterhours communication they receive from you, their employer or from a third party (e.g. customer, clients) where such a refusal is reasonable.

5.5 Will any after-hours contact be unreasonable?

No. Firstly, as answered above, there is no prohibition on contacting an employee outside working hours. However, the employee can elect not to respond until they recommence work. In certain industries and occupations, the employee's right of refusal (that is, their right to not monitor communications or respond to them) may be limited. This is because, if it is unreasonable for an employee to refuse to monitor or respond to work-related communications, then the employer can still expect the employee to monitor and respond to the communications.

It is important to note that the legislation does not require an assessment of whether the contact itself is reasonable, rather the assessment required is whether the employee's refusal to monitor, read or respond is reasonable.

5.6 Can I expect an employee to respond to my communication?

The right to disconnect requires that an employee's exercise of the right is reasonable. This indicates that there will be instances where an employee's exercise of their right to disconnect will be unreasonable, which will likely be in instances where an employer can reasonably expect a reply.

In circumstances where an employee is not being specifically compensated to monitor, read, or respond to work-related communication (i.e. in receipt of a stand-by allowance, or other equivalent payment), an employer will need to justify their expectation, and demonstrate that an exercise of the right to disconnect in such a situation would be unreasonable.

5.7 **What if my employee/s are covered by a modern award?**

A right to disconnect term has been added into all Modern Awards. Employers will need to ensure compliance with the right to disconnect provisions contained in the FW Act and the relevant award(s).

Employers should prepare for applications to vary modern awards made by unions to make the right to disconnect term more regulatory. Where the right to disconnect term does not adequately service the modern award, an employer, or employer group, may progress an application to vary the modern award.

5.8 **Do these provisions apply to labour hire workers?**

Yes. These provisions apply broadly to all work-related contact or attempted contact. There may be some practical difficulties in labour hire providers monitoring compliance with these provisions where a worker is performing work for a third-party company.

5.9 **What is the best way to handle the right to disconnect in the workplace?**

Communication is key. Employers should be very clear with their employees regarding workplace expectations, and when an exercise of the right to disconnect is considered unreasonable. Employers should practically assess whether their expectations are likely to breach the FW Act or a relevant modern award, to reduce the risk of disputes.

Employers should also reassess their method and means of communication and ensure that where an employee is not expected to respond to communication, that it is clearly conveyed.

6. General Advice

-  1. Identify how contact is made in your business
-  2. Educate Managers and Employees on the changes
-  3. Review and update employment contracts
-  4. Update internal processes and policies

6.1 What should employers be doing to address the right to disconnect laws?

As a first step, employers will need to carefully consider their industry, the tasks that their employees complete, and how much they pay their employees. Whether it's fair to expect employees to monitor and respond to communications outside of their ordinary working hours will also depend on the individual and their position within a business. Employers will now have to actively adjust their expectations when contacting employees after hours, especially for those employees who are less experienced or hold junior positions within a business.

Below is a list of ways to assist employers in adhering to the right to disconnect laws:

1. Identify how contact is made in your business

Identify within your business when contact is typically made by employers to employees outside of their ordinary hours, and put in place mechanisms to ensure that the new law is being adhered to in such instances.

If a company has teams that work in a different time zone from its Australian teams, it might be helpful to clarify at the start of each task, project, or communication that employees who are based in the Australian time zone are not required to respond or work outside of their regular hours based on their local time zone.

It may also assist employers to categorise the types of communication that typically occurs out of hours and differentiate the approach to the method of communication. For example:

- Non-urgent communication may be made via email, or another less intrusive method of communication. It may also be qualified with a message to state that there is no expectation that an employee responds to that communication.
- Urgent communication, or communication relating to an emergency may take place via phone call, and may be followed up via text if the call is unanswered.

2. Understand when an Employee's refusal to monitor, read and respond may be unreasonable

Many businesses, particularly those covered by modern awards or enterprise agreements may have terms indicating that an employee is expected to respond to communication out of hours.

Familiarise yourself with terms of the modern award or enterprise agreement (where applicable) that indicate an employee may be expected to respond to out of hours communication. These terms may include on-call or stand-by arrangements, and an employee is typically remunerated for their availability to respond to communication.

Additionally, when formulating a policy regarding the right to disconnect in the workplace, it will be important to communicate instances where an exercise of the right to disconnect will be unreasonable. This will include providing details of what an emergency or urgent situation looks like in that particular workplace, and how the employer intends to communicate the urgency to the employee.

3. Educate Managers and Employees on the changes

Many businesses, particularly those covered by modern awards or enterprise agreements may have terms indicating that an employee is expected to respond to communication out of hours.

Managers and key decision makers in an organisation should actively educate themselves on how the right to disconnect interacts with the general protections provisions in the FW Act, to avoid any such claims being brought against them by an employee who believes adverse action has been taken against them due to exercising their right to disconnect.

Training and related communications should reinforce the appropriate behaviours around disconnecting from work outside normal working hours.

See Annexure A for a template email communication to employees and managers on the right to disconnect

Tone and sense of urgency in written communications should be proportionate, particularly those sent outside of normal working hours — texts or emails sent outside of normal working hours may be easily misinterpreted by the recipient as to its urgency.

Where appropriate managers should consider using technology to their advantage when contacting employees outside of their ordinary hours of work, to remind employees and customers/clients, where relevant, that there is no requirement to reply to emails out of hours and an answer should not be expected examples may include:

- a. **Automatic Replies** — consider enabling automatic replies indicating the dates that someone is out of the office, the date they will return to the office, and an alternate point of contact during the employee's absence.
- b. **Clarify expectations** — Outlining at the top of an email that there is no expectation for the employee to respond whilst outside of their ordinary working hours; or
- c. **Delay Delivery** — Scheduling the email to send during the employee's ordinary working hours.
- d. **Email Signatures** — consider including reference to the timing in e-mail communications containing signature blocks, such as "My working hours may not be your working hours. Please do not feel obligated to respond to this e-mail outside of your normal working hours."

4. Review and update employment contracts

Reviewing and updating employment contracts for those not covered by an enterprise agreement or modern award.

For those not covered by an enterprise agreement or modern award, their contract of employment may already state that their annual salary includes compensation for all 'reasonable and additional hours'. However, such contracts are typically silent on what 'reasonable and additional hours' is defined as, both on a quantity level (number of additional hours) and also what tasks would be required during such additional hours of work.

With now bearing in mind the right to disconnect, employers should be more conscious when drafting such clauses in employment contracts. They should consider whether to include in their contracts that the employee's remuneration also includes a component for requiring the employee to monitor and respond to employer communications outside the employee's working hours. Noting that an employer cannot specifically exclude an employee from exercising the right to disconnect. Where an employer makes continual contact for non-urgent matters outside of working hours, it is likely that an employee's exercise of their right to disconnect will still be deemed reasonable.

Such clarifications in contracts of employment may now be particularly important as when determining whether out-of-hours contact is considered as 'unreasonable', as the new legislation requires the FWC to actively consider whether employees are being adequately compensated for being contact outside of working hours, when determining whether a refusal to monitor or respond to communications is reasonable.

See Annexure B for examples of improvements to working hours clauses in employment contracts

5. Update internal processes and policies

Employers should create policies and/or guidelines in relation to the right to disconnect.

Internal policies

Establishing transparent workplace expectations regarding out-of-hours contact is crucial for ensuring both employees and managers understand their responsibilities under the new legislation. Such guidelines and policies should clearly state the circumstances and methods through which out-of-hours communication with employees should occur.

At a minimum, such policies or guidelines should make it clear that unless a refusal is unreasonable, employees are not obligated to monitor or respond to unreasonable out-of-hours contact, and managers must consider the urgency and necessity of contacting an employee outside of their ordinary work hours before initiating such communication. Additionally, such policies or guidelines should explain to employees that the right to disconnect does not encompass a prohibition on after-hours contact from their employer.

A comprehensive policy will include standard practice for the method of communication and carve out how those methods will be utilised for communication of varying urgency.

A workplace policy should also clarify that if an employee has concerns regarding out-of-hours contact and whether exercising their right to disconnect is reasonable, that they should first address these concerns with their manager at the workplace level. This approach is vital because the employer may deem specific out-of-hours communications as essential to the employee's role.

Establishing clear policies or guidelines for managers and employees regarding the right to disconnect should assist in minimising the likelihood of disputes escalating beyond the workplace and into the FWC. Clear communication of expectations that have been balanced on a test of reasonableness for that workplace will ensure that employees and employers are on the same page.

See Annexure C for a template right to disconnect policy.

External engagement

Setting clear expectations from the beginning when entering arrangements / relationships with clients in relation to the right to disconnect.

A practical measure that employers can take to ensure that clients (and/or any type of third party e.g. suppliers) are aware of the right to disconnect, is by ensuring that they are made aware that employees may refuse to monitor, read or respond to contact that is made by them after hours. This could be done by including a term / clause that explicitly outlines the right to disconnect legislation in the initial terms of engagement with the client (e.g. in a contract for services). This will not only assist in managing client expectations when clients send emails or make telephone calls to employees outside ordinary hours or work, but this will also reinforce to your employees that you, as their employer, are adhering to the right to disconnect legislation.

Further Guidance

- 6.2 The Fair Work Ombudsman provides some [advice](#) relating to the right to disconnect.
- 6.3 The Department of Employment and Workplace Relations (**DEWR**) has a [factsheet](#) on the right to disconnect.
- 6.4 The FWC has extensive advice relating to adverse action and workplace rights in its [general protections benchbook](#).

7. Annexures

Annexure A — Template Email Communication to employee and managers on the right to disconnect

IMPORTANT! READ THE BELOW INFORMATION AND INSTRUCTIONS BEFORE USING THIS TEMPLATE



Summary

The following contains two template emails, one for employees and one more managers / key personnel within your business.

Both emails briefly explain what the right to disconnect is and what to do should a dispute arises in the workplace in relation out of hours contact.

The template email to managers / key personnel also outlines risks and provides some practical steps that can be taken to minimise risks in the workplace with respect to the implementation of the right to disconnect.

How to use the template emails

The template emails contain **highlighted** text which indicate areas where you need to replace the writing with what applies to the company.

Explanatory information is shown in blue italics to assist you and should be deleted once you have finalized the email.

Ensure all highlighted text and explanatory information has been completed or deleted, as appropriate, before issuing an email to any employee.



Timing

Please note, you should only send the below template email to managers / key personnel either directly in the lead up to or once the legislation has commenced operation.

The right to disconnect legislation will apply to national system employees and employers, other than those in small business employers, from **26 August 2024**. Modern awards will include a right to disconnect term from this date.

Small business employers are exempt from the right to disconnect provisions for the first 12 months after the new right commences to operate. From **26 August 2025**, the provisions will apply to small businesses.

1. TEMPLATE EMAIL TO EMPLOYEES — Disconnecting from work

To: <[insert employee]>

Subject: Disconnecting from work

Dear [insert employee]

As you may be aware, the recent changes in workplace legislation have introduced the right for employees to disconnect which is commencing on 26 August [2024/2025].

As an employee with [Name of Employer] I'm writing to share some essential information about the new right to disconnect, as well as some practical guidance on how to navigate this new requirement in your communication and day to day deals with your colleagues.

Overview of the new right to disconnect

Firstly, it is important for all employees to be aware that the new right to disconnect does not prohibit you or anyone else you're working with at [Name of Employer], including [customers, clients and suppliers] from contacting each other outside of working hours.

What the recent changes mean is that as an employee you are entitled to disconnect from work. This means in some circumstances you may be entitled to refuse to monitor, read or respond to contact (or attempted contact), related to your work at [Name of Employer] including from a third party (e.g. [customers, clients, suppliers]) outside of your working hours. This will be the case where the contact is outside of your working hours, related to your work and where your refusal is not unreasonable.

When determining whether a refusal is unreasonable, the reasons for the contact, how it is made and level of disruption caused, the extent to which you are compensated for being available or working additional hours, the nature of your role and level of responsibility and your personal circumstances must all be taken into account.

Right to disconnect policy

[Optional paragraph — use if you have a right to disconnect policy / delete if not relevant]

In line with this recent change to the law, [Name of Employer] has recently developed a new internal [insert name of policy e.g. Disconnecting from Work] policy that outlines our expectations around the right to disconnect. This will ensure everyone has a consistent understanding and follows best practices.

I encourage you to review this new policy which can be accessed [insert where policy can be accessed or attach to email]. If you have any questions about this new policy or about out of hours contact, please do not hesitate to get in contact with [insert contact person].

Practical Tips

It is important that each of us play a role in fostering a safe and healthy work environment at [Name of Employer], whilst remaining productive, adaptable and forward-thinking.

Here are some practical tips to consider when thinking about the way you communicate with others outside of working hours:

1. **Assess necessity:** Before contacting a colleague after hours, consider whether it's truly necessary. If it can wait until the next business day, consider refraining until then.
2. **Clear communication:** When communicating after hours, consider adding a sentence at the top or bottom of your text message or email indicating your expectations around a response such as *"My working hours may not be your working hours. Please do not feel obligated to respond to this e-mail outside of your normal working hours."* This will help manage expectations and reduces the pressure on others to engage with any non-urgent work outside of their working hours.
3. **Use scheduling tools:** Utilise email scheduling functions to send messages during working hours, even if you draft them after hours, for example, on Monday evening you draft an email to an employee at 10:00pm, but use the scheduling function in Outlook to program the email to actually be delivered to the employee's inbox at 9:00am the following morning.

Thank you for your cooperation in this matter. If you have any questions or if this email raises any concerns, please don't hesitate to reach out.

Sincerely

[insert your name]

[insert your position]

2. TEMPLATE EMAIL TO MANAGERS — Disconnecting from work

To: [Insert manger/team leader/ supervisor]

Subject: Disconnecting from work

Dear [Insert name of manager/leader/supervisor]

As you may be aware, the recent changes in workplace legislation have introduced the right for employees to disconnect which is commencing on 26 August [2024/2025].

As a [manager/supervisor/leader] with [Name of Employer] I'm writing to share some essential information about the new right to disconnect, as well as some practical guidance on how to navigate this new requirement in your communication and day to day deals with your team to ensure we don't as a company and as individuals we do not inadvertently violate the new laws.

Overview of the new right to disconnect

Under the new right to disconnect legislation an employee may refuse to monitor, read or respond to contact (or attempted contact) from their [Name of Employer] or a third party (e.g. customers, clients, suppliers) outside of their working hours, unless the refusal is unreasonable.

When determining whether a refusal is unreasonable, the reasons for the contact, how it is made and level of disruption caused to the employee, the extent to which the employee is compensated for being available or working additional hours, the nature of the employee's role and level of responsibility and the employee's personal circumstances must all be taken into account.

It is important for all [managers, supervisors, leaders] to be aware that the legislation does not prohibit you or anyone else from contacting employees outside of their working hours. However, where such contact relates to work, is outside of their working hours and is unreasonable an employee may have the right not to monitor, read or respond to such communication.

Impact of the right to disconnect on decision making

The right to disconnect is at law an employee's "workplace right". This means as a [manager/leader/supervisor] you will need to factor in the new right to disconnect into key employee decisions.

In particular, you will need to ensure performance management processes are managed carefully, taking into account the new right. For example, when making promotion decisions, it will be important that an employee is not treated unfavourably because they have refused to monitor or respond to emails outside their working hours, unless their refusal was unreasonable.

Right to disconnect policy

[Optional paragraph — use if you have a right to disconnect policy / delete if not relevant]

In line with this recent change to the law, [Name of Employer] has recently developed a new internal [Insert name of policy e.g. Disconnecting from Work] policy that outlines our expectations around the right to disconnect. This will ensure everyone has a consistent understanding and follows best practices.

I encourage you to review this new policy which can be accessed [insert where policy can be accessed or attach to email]. If you have any questions about this new policy or about out of hours contact, please do not hesitate to get in contact with [insert contact person].

Practical Steps

As a [insert key personnel title e.g. manager/leader/supervisor], you will need to factor in the right to disconnect in your day-to-day contact with employee to ensure we foster a safe and healthy work environment for all employees, whilst remaining productive, adaptable and forward-thinking.

Here are some practical steps to consider in the way you might communicate with staff outside of working hours in light of the new right to disconnect:

4. **Assess necessity:** Before contacting a staff member after hours, consider whether it's truly necessary. If it can wait until the next business day, consider refraining until then.
5. **Clear communication:** When communicating after hours, consider adding a sentence at the top or bottom of your text message or email indicating that the employee is not expected to respond until the following workday such as *"My working hours may not be your working hours. Please do not feel obligated to respond to this e-mail outside of your normal working hours."* This will help manage expectations and reduces the pressure on employees to engage with any non-urgent work outside of their working hours.
6. **Use scheduling tools:** Utilise email scheduling functions to send messages during working hours, even if you draft them after hours, for example, on Monday evening you draft an email to an employee at 10:00pm, but use the scheduling function in Outlook to program the email to actually be delivered to the employee's inbox at 9:00am the following morning.

Thank you for your cooperation in this matter. If you have any questions or if this email raises any concerns, please don't hesitate to reach out.

Sincerely

[insert your name]

[insert your position]

Annexure B — Example of contract terms

Many contracts of employment will specify an employee's annual salary and will include reference to their salary being compensation for 'reasonable additional hours'. This is particularly the case for non-enterprise agreement or modern award covered employees.

In light of the right to disconnect, and the new provisions require the FWC to take into account whether employees receive compensation to work additional hours or to remain on standby outside of their ordinary hours, when deciding whether out of hours communications are unreasonable, employers should consider including additional detail in such clauses, so that the expectation regarding after working hours contact and related compensation is clear.

If you are clear with your employees about the requirement for them to deal with afterhours contact to perform the inherent requirements of their role and that specific compensation is provided acknowledging these specific requirements, then the FWC will be more likely to find that your afterhours contact is reasonable.

An example of this is set out below.

Hours of work

You agree that your ordinary hours of work will be 38 hours per week, averaged over a period of up to 26 weeks. However, due to the nature of [insert business name] business and your position, you agree it is reasonable for you to work any additional hours necessary to achieve the efficient and effective performance of your duties.

The following is a non-exhaustive list of duties that you agree you may be required outside of your ordinary working hours:

- *Responding to contact from clients/customers or suppliers outside of your ordinary working hours*
- *Assisting members of your team with urgent tasks*
- *[insert other tasks based on the employee role and level of remuneration]*

You agree that you will not receive any additional remuneration for any additional hours worked as these additional hours have been taken into account in setting your remuneration.

Annexure C — Template Right to Disconnect Policy

IMPORTANT! READ THE BELOW INFORMATION AND INSTRUCTIONS BEFORE USING THIS TEMPLATE

How to use the template policy

The purpose of this template is to provide you with a right to disconnect policy that you can customise to your business needs.

The template policy contains **highlighted** text which indicate areas where you need to replace the writing with what applies to your businesses particular circumstances.

Explanatory information is shown in *blue italics* to assist you and should be deleted once you have finalised the letter.

Ensure all highlighted **text** and explanatory information in *blue italics* has been completed or deleted, as appropriate, before formally implementing the policy and providing it to any employees/workers.



Recommendations

- Ensure you tailor the policy to your individual workplace and applicable industrial instruments (employment contract, modern award/s, enterprise agreement/s).
- Clearly communicate this policy to all employees and any new hires.
- Review any sensitive issues with a qualified lawyer for additional peace of mind.
- Conduct periodic reviews of this policy to ensure it reflects all legislative, regulatory and internal policy changes.



Disclaimer

This template was drafted by Australian Business Lawyers and Advisors in consultation with the Australian Chamber of Commerce and Industry. It is intended to provide guidance and does not constitute legal advice. Neither the transmission of this sample legal document nor the transmission of any information contained it is intended to create, and receipt hereof or thereof does not constitute formation of, a lawyer-client relationship.

It is always recommended that you consult with your organization's legal advisor(s) when interpreting and applying the law in your workplace.

Need assistance of advice with this template? Contact us!

Get in touch with one of the team at:

Website: Ablawyers.com.au

Phone: 1300 565 846

Delete this page after you have finalised your policy.

[Insert business name]

Disconnecting from work Policy

[Guidance Note (delete): you may wish to give this policy a different title that is more reflective of language used in your workplace, for example: Right to disconnect Policy, Responsible Connectivity Policy, Work Engagement Policy, Effective Work Communication Policy]

This policy was adopted by [insert business name] on [insert date policy is officially adopted]

This policy will be reviewed [insert frequency of review i.e. yearly]

Date of last revision: [insert date of last change to policy].

1. INTRODUCTION

- 1.1 [Name of Employer] is committed to fostering a safe and healthy work environment for all employees, whilst remaining productive, adaptable and forward-thinking.
- 1.2 [Name of Employer] acknowledges the newly enacted employees' right disconnect from work outside of working hours, where reasonable, under the Fair Work Act 2009 (Cth).
- 1.3 This Policy strives to ensure that all employees are treated, and treat others, in a manner that balances productivity with overall health and wellbeing by setting out [Name of Employer]'s expectations around work-related communications in an effort to assist everyone in the workplace.

2. PURPOSE

[Guidance Note (delete): Employers can tailor the purpose below to suit their business needs.]

- 2.1 The purpose of this policy is to establish guidelines in relation to the right to disconnect in the Fair Work Act and to outline a process for dealing with any disputes that may arise in the workplace in relation to it.

3. DEFINITIONS

- 3.1 **Working hours** means the hours of work outlined in employee's employment contracts (or for shift works, their rostered hours) and/or applicable modern award or enterprise agreement including overtime.

[Guidance Note (delete): check this terminology is consistent with the terms of your standard employment contracts. If not amend to reflect the terminology used around employees' hours of work].

- 3.2 **Out of working hours contact** means work related communications outside of an employee's working hours, including emails, phone calls, video calls., instant messages, texts, and request through collaboration platforms.
- 3.3 **Right to disconnect** means an employee's not monitoring, reading or responding to contact (or attempted contact) from [Name of Employer], its employees, customers, clients or suppliers where the contact relates to work and is outside of the employees working hours , unless it is unreasonable to do so.

4. SCOPE

- 4.1 This policy applies to all employees employed at [Name of Employer].

[Guidance Note (delete): This draft policy applies to all employees, including managers and supervisors. However, employers may choose to establish different parameters for different categories of employees within the same policy, or have different policies for different categories of employees. For example, an employer may have one policy for managers and supervisors, one for sales staff, and one for general office staff.]

5. WORKING HOURS

- 5.1 This Policy does not amend an employee's hours of work or breaks. Employees' working hours and breaks are defined pursuant to their [employment contracts and/or applicable modern award, enterprise agreement].

6. DISCONNECTING

- 6.1 [Name of Employer] will take steps to ensure all employees are informed of their working hours.
- 6.2 "Right to disconnect" under this Policy means not monitoring, reading or responding to contact (or attempted contact) from [Name of Employer], its employees, customers, clients or suppliers where the contact relates to work and is outside of the employee's working hours, unless it is unreasonable to do so.
- 6.3 To help determine whether an employee's refusal to monitor, read or respond to contact is 'unreasonable', the following factors will be relevant considerations:
- the reason for the contact or attempted contact;
 - the method of contact and level of disruption it causes the employee;
 - the extent to which the employee is compensated to remain available or perform additional work outside of their ordinary hours;
 - the nature of the employee's role and the employee's level of responsibility, and
 - the employee's personal circumstances (including family or caring responsibilities).
- 6.4 Additionally, [Name of Employer] considers that it is reasonable to expect that employees will respond to communication where the communication is urgent or relates to an emergency. Examples of urgent communication or emergencies may include but are not limited to:

- [Insert relevant details]

[Guidance Note (delete): (optional paragraph) Paragraph 6.4 seeks to provide additional information to employees about when an exercise of the right to disconnect will be unreasonable. This list should be limited only to matters of emergency or extreme urgency, as they may still be subject to review by the FWC in the event of a dispute.]

- 6.5 In the event of an emergency or urgent communication, [Name of Employer] will contact an employee [insert method of communication].

[Guidance Note (delete): (optional paragraph) Paragraph 6.5 should establish a clear method of communication so that employees can clearly understand whether communication is of an urgent nature. This will ensure that employees who are seeking to exercise their right to disconnect can understand the nature of the communication. The method of communication should be distinguishable from other methods of communication, so an employee can clearly understand the urgency of the communication.]

- 6.6 An employee right to disconnect does not preclude [Name of Employer], its employees, customers, clients or suppliers from contacting employees for work-related purposes outside of an employee working hours.

7. ROLES AND RESPONSIBILITIES

- 7.1 [Name of Employer], its [management, supervisors, leaders] and employees must work together to ensure [Name of Employer] fosters a culture that allows employees to disconnect from work outside of working hours in accordance with this Policy.
- 7.2 All employees must:
- understand and comply with this policy;
 - monitor, read, respond to contact or attempted contact outside of their working hours that is reasonable;
 - give due consideration to the timing of their communication with other employees;
 - take all reasonable steps to ensure that other employees are able to disconnect from work in accordance with this policy;
 - fully cooperate with any time recording methods which [Name of Employer] uses to track hours of work;
 - follow the reporting procedure in this Policy to raise any concerns regarding the right to disconnect; and
 - seek guidance where necessary.

- 7.3 [Managers, supervisors, senior leaders] have additional responsibilities on top of those as an employee. It is expected that they:
- ensure all employees understand and comply with this policy;
 - make reasonable endeavours to not unreasonably contact employees outside of their working hours;
 - to refrain from subjected employees to adverse action (e.g. disciplinary action) for refusing to monitor, read or respect to unreasonable contact outside of their working hours;
 - take seriously all concerns about breaches of this policy, try to resolve any concerns and where necessary treat such concerns confidentiality; and
 - provide guidance and support is sought where required.

8. DISPUTE RESOLUTION

- 8.1 If an employee has concerns about their right to disconnect outside of their working hours, they should first speak with their [supervisor/manager/leader] to deal with the issue.
- 8.2 In the event the issue is not able to be resolved with their [supervisor/manager/leader], employees are directed to raise the issue with [human resources, a senior manager, or insert name and or title of relevant person].
- 8.3 [Insert company name] has a dispute resolution procedure for dealing with these issues.
- 8.4 The dispute resolution procedure has numerous options available to suit the particular circumstances of each individual situation.
- 8.5 The manner in which a complaint will be handled is solely at the discretion of [Insert company name].
- 8.6 The following are examples of ways in which complaints regarding the right to disconnect may be dealt with.

Confront the issue

- (a) if an employee feels comfortable doing so, they should address the issue with the person concerned and make them aware that they find the behaviour unreasonable.

Report the issue

- (b) if the behaviour continues, or if the complainant feels uncomfortable / unable to speak to the specific individual(s) directly, they should speak to their [manager, human resources, a senior manager, or insert name and or title of relevant person]
- (c) the [manager, human resources, a senior manager, or insert name and or title of relevant person] will aim to deal with the employee's complaint in accordance with this Policy, including

Dispute procedure

- (d) there are a range of procedural options for facilitating discussions between the person concerned and the other party to the dispute.
- (e) the procedure used to address the issue will depend on the individual circumstances of. Possible options include, but are not limited to:
- (i) the [manager, human resources, a senior manager, or insert name and or title of relevant person] discussing the issue with the other party to the dispute;
 - (ii) the [manager, human resources, a senior manager, or insert name and or title of relevant person] facilitating a meeting between the parties in an attempt to resolve the issue and move forward; and/or
 - (iii) a formal investigation.

acci.com.au

sacsa.org.au

